

Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
Facsimile: (973) 228-0303
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHERYL WESTERKAMP, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT
AND JURY DEMAND**

Plaintiff Cheryl Westerkamp hereby files this class action complaint individually and on behalf of all others similarly situated, by and through the undersigned attorneys, against Defendant Samsung Electronics America, Inc. (“Samsung” or “Defendant”) and alleges as follows based upon personal knowledge as to herself and her own acts and experiences; and, as to all other matters, upon information and belief based upon, *inter alia*, investigations conducted by her attorneys.

NATURE OF THE CASE

1. This case involves Samsung’s design, manufacturing, marketing, and sale of Galaxy Buds Pro headphones (“Earbuds”) that are defective in material, workmanship and/or manufacturing that resulted in earpieces that are made out of a material that causes an allergic

and/or inflammatory reaction in individuals that use the Earbuds (“Defect”), ultimately rendering the Earbuds unusable for their ordinary purpose.

2. The Defect generally causes the user of the Earbuds to suffer, among other things, itching, burning, redness, blistering, flaking, scabbing and/or fluid leaking from the ear.

3. There is no effective means of resolving the problems caused by the Defect and users suffering from these symptoms are forced to stop using the Earbuds, rendering them useless.

4. The Defect is so widespread that the Internet is replete with consumers complaining about the Defect, and Samsung has posted numerous public responses to those complaints.¹

5. All Earbuds utilize the same component parts or the same manufacturing process which gives rise to the Defect.

6. Samsung exercised exclusive or substantial control over the design, material, workmanship, manufacturing, and/or product testing process of the Earbuds.

7. Therefore, Samsung knew or should have known that the Earbuds were subject to a significant risk of the Defect manifesting within a short period of normal consumer use.

8. When Samsung marketed, advertised, and sold the Earbuds, it was aware that consumers reasonably purchased the Earbuds with the expectation they would not cause an allergic reaction in their ears that would force the consumer to stop using them.

9. In fact, the Earbuds were marketed as the “Pro” line of in-ear headphones, which denotes Samsung’s flagship model for the device. The Earbuds retail for \$50 more than the Galaxy Buds+ and \$30 more than the Galaxy Buds Live.

¹ See, e.g., <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/29>; https://www.reddit.com/r/galaxybuds/comments/lucuiq/samsung_buds_pro_allallergic_reaction/.

10. When Samsung marketed, advertised, and sold the Earbuds, it failed to disclose to consumers that the Earbuds were manufactured with the Defect. Furthermore, Samsung failed to disclose that consumers who suffered an allergic reaction to the Earbuds would be forced to stop using them long before the end of their useful life.

11. Samsung provided consumers a one-year warranty on the Earbuds. Nevertheless, even when consumers complain about the Defect during the warranty period, Samsung has not been able to repair the defect and instead encourages consumers to purchase aftermarket foam tips to try to prevent the allergic reaction from occurring. For most consumers, the aftermarket tips do not prevent the allergic reaction, causing consumers to increase their out-of-pocket losses due to the Defect.

12. Plaintiff, individually and on behalf of the Class defined below, seeks to obtain relief from Samsung, including, *inter alia*, damages and declaratory relief. Specifically, this class action is brought to remedy violations of law in connection with Samsung's fraudulent and deceptive marketing and pricing scheme relating to the Earbuds. Samsung represents, through advertising to potential customers, that the Earbuds are the top-of-the-line product and are safe to place in the ear when they are not.

13. Samsung's marketing techniques are false and misleading in that a reasonable consumer would believe that the Earbuds were of premium quality, are capable of being used as intended and would not result in health risks under ordinary use.

14. But in reality, the Defect renders the Earbuds unsafe and useless, and result in significant health issues.

15. Samsung also inflates its Earbud prices to reflect their purported superiority and sound capabilities.

16. Because of this scheme, consumers across the nation are paying more than they would otherwise pay if the true facts were disclosed by Samsung, and consumers are receiving a lower quality product than is represented in Samsung's advertising.

17. Accordingly, Plaintiffs bring this action to redress Samsung's violations of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*, as well as unjust enrichment claims.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and Defendant are citizens of different states. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Samsung maintains its headquarters in this District, has advertised in this District and received substantial revenues and profits from its sales of Earbuds which it has directed into the stream of commerce in this District. Therefore, a substantial part of the events or omissions giving rise to the claims occurred in this District, and Defendant is subject to personal jurisdiction in this District.

PARTIES

Plaintiff Cheryl Westerkamp

20. Plaintiff Cheryl Westerkamp is a citizen and resident of New Jersey.

21. In April 2021, Plaintiff purchased the Samsung Galaxy Buds Pro, Phantom Black for personal use, Item No. SM-R190NZKAXAR, for \$203.84.

22. Plaintiff at all times used and maintained the Earbuds consistent with expected use

of in-ear headphones.

23. Shortly after Plaintiff began using the Earbuds she began experiencing soreness in her ears and at first Plaintiff did not know what was causing the pain. As Plaintiff continued to use the Earbuds the soreness continued and began to result in scabbing, flaking, oozing and other issues.

24. A recent photo of Plaintiff's ear is below:



25. In or about July 2021, Plaintiff contacted Samsung about the Defect and the issues she was having. The Samsung representative she spoke with acknowledged that other consumers were having similar issues and recommended that Plaintiff purchase aftermarket foam tips sold and manufactured by a third-party to try to remedy the Defect.

26. Heeding Samsung's advice, on July 21, 2021, Plaintiff purchased a pair of memory foam tips that are allegedly designed for use with the Earbuds, at a cost of \$22.69. Unfortunately,

these aftermarket tips did not alleviate the symptoms, which continued to get worse, forcing Plaintiff to stop using the Earbuds altogether.

27. Plaintiff is now left with Earbuds and aftermarket foam tips that she cannot use.

The Defendant

28. Defendant Samsung is a corporation duly organized and existing under the laws of the State of New Jersey with its American headquarters and principal place of business located at 85 Challenger Road, Ridgefield, New Jersey 07660-2118.

29. Samsung markets, advertises and sells the subject Earbuds throughout the United States, including in New Jersey.

TOLLING OF STATUTES OF LIMITATIONS

30. Any applicable statute(s) of limitations have been tolled by Samsung's knowing and active concealment and denial of the facts alleged herein. Plaintiff and the members of the Class could not have reasonably discovered the true, latent nature of the Defect until shortly before this class action litigation was commenced.

31. Samsung was and remains under a continuing duty to disclose to Plaintiff and the members of the Class the true character, quality and nature of the Earbuds, and that the Defect results from failures in the material, workmanship or manufacturing process, can cause significant ear issues, poses a safety risk, and results in the inability to use the Earbuds.

FACTUAL ALLEGATIONS

Samsung Markets the Earbuds to the Public

32. Samsung is the designer, manufacturer, producer, distributor, and/or seller of numerous electronic products, including Earbuds, throughout the United States.

33. Samsung markets, advertises, and sells the Earbuds directly to the consumer

through its own website and nationwide advertisements.

34. Samsung sells the Earbuds directly to the consumer through third-party online retail sites, such as Amazon.com.

35. Samsung also sells the Earbuds through leading retailers in the United States, such as Best Buy, Walmart, Target, PC Richard & Son, as well as through local retailers.

36. Samsung markets its products as safe, state-of-the-art, first-class, and high-end, especially when compared with other in-ear headphones.

The Earbuds are Durable Goods and Are Reasonably Expected to Last Several Years

37. By marketing, advertising, and selling the Earbuds, Samsung was, or should have been, aware that consumers reasonably consider in-ear headphones, including the Earbuds, to be “durable goods.”

38. A durable good is a product a consumer reasonably expects to provide several years of utility before it needs to be replaced or repaired.

39. As such, a consumer reasonably expects durable goods to function as intended for a significant time after purchase. It is material to a reasonable consumer, including Plaintiff and the Class, that a durable good last for a significant period of time without needing to be repaired or replaced.

40. At all relevant times in marketing, advertising, and selling the Earbuds, Defendant was, or should have been, aware that consumers reasonably purchase the Earbuds with the expectation they will last for several years before they need to be replaced.

The Earbuds Are Defective

41. Every Earbud contains a Defect arising from the material, workmanship and/or manufacture of the product.

42. Upon information and belief, the Defect arises from the certain materials used to make the casing and tips of the Earbuds.

43. After a short period of regular use, the presence of these defective and/or faulty materials cause consumers to suffer a reaction in their ears.

44. Because the Earbuds do not appear to be made from materials different from other electronic products on the market, the Defect is not readily observable to a reasonable consumer upon purchase or during the initial use.

45. The Defect creates the danger to the health and well-being of consumers that use the Earbuds.

Samsung Likely Has Longstanding Knowledge of the Defect through its Product Testing

46. Samsung is experienced in the design and manufacture of Earbuds and other electronic products, and conducts pre- and post-release testing on its products.

47. Such tests are designed to verify that the Earbuds and their component parts are free from defects and comply with Samsung's specifications. In fact, Samsung represents that "[b]efore any new device in the Galaxy series is launched, numerous tests are conducted to ensure its capability to withstand the wear and tear of daily life."²

48. Samsung maintains a testing facility in Suwon, South Korea. There, electronic products like the Earbuds "undergo rigorous trials to meet specifications, while the device is placed under extreme conditions to determine its durability."³

49. Samsung has stated that "[t]he process of creating a new product is not something

²<https://news.samsung.com/global/lab-tour-how-samsung-is-ensuring-the-reliability-of-galaxy-devices>.

³ *Id.*

to be taken lightly, especially when it has the potential to touch millions of lives.”⁴ As such, designing and selling a Samsung product is an effort “by the hundreds and thousands of team members at Samsung that work tirelessly to ensure that each opening of a refrigerator door, for example, is a good experience.”⁵

50. Samsung represents that it conducted pre- and post-release testing on the Earbuds and their component parts, which would ensure the parts are free from defects and comply with Samsung’s and international standards:

As soon as decisions begin to be made about a new device or model, the Reliability Test Group gets to work. Once the specs and features are determined, the group considers which parts require testing and verification, and the process starts even before the features have been fully integrated. Test results are immediately passed on to the development division for improvement. Throughout development, the test group engages continuously in the production process, processing feedback about the device even after its launch and release. More than a dozen tests are required to validate a product. While the number varies from device to device, thousands of models are put to the test before launch. The tests are designed to evaluate how the devices perform during normal day-to-day use and follow a standard based on internationally-certified test criteria.⁶

51. As a result, Samsung knew or should have known that the Earbuds were defective and likely to pose a safety and health risk that rendered them useless.

52. Furthermore, through its product testing, Samsung knew or should have known that the Defect could not have been discovered prior to purchase and use of the Earbuds.

53. Upon information and belief, Samsung possessed the foregoing actual or

⁴<https://news.samsung.com/global/holmes-the-unsung-heroes-behind-the-addwash-washing-machine> (last visited Dec. 3, 2020).

⁵ *Id.*

⁶ <https://news.samsung.com/global/lab-tour-how-samsung-is-ensuring-the-reliability-of-galaxy-devices>.

constructive knowledge before marketing, advertising, and selling the Earbuds to Plaintiff and the Class.

Samsung Has Longstanding Knowledge of the Defect Through Consumer Complaints

54. Upon information and belief, Samsung began selling the Earbuds in January 2021, although it has sold other in-ear headphones for many years.

55. Based on the numerous reports in the public domain of the Defect manifesting within days or weeks of regular use, on information and belief, Samsung received calls, communications, correspondence, or warranty claims from consumers regarding the Defect with the Earbuds as early as January 2021.

56. Samsung was aware of the Defect with the Earbuds prior to selling the Earbuds to Plaintiff as a result of consumer complaints on Samsung's own website, Samsung's storefront on Amazon.com, and third-party consumer complaint forums. These complaints, some of which are included below, evidence Samsung's awareness of the Defect and the inappropriateness of its failure to address the Defect in any way.

57. The online forum Samsung hosts includes multiple consumer complaints about the Defect.

58. A sampling of the customer complaints on the Samsung Community forum includes:

Consumer No. 1:

Hello,

I just got the Galaxy Buds Pro, they seem to be causing an allergic reaction in my ear. Has anyone else had this issue? If so what can be done to keep it from happening?

What are the earbuds tips made from? I believe it's the tip of the buds that are

causing the problem, not bulk of the speaker housing.⁷

Samsung Response (by SamsungJustin):

Thank you for reaching out. If you're experiencing this or similar symptoms please reach out to our support team directly: <https://bit.ly/3fbRevo>

Can you please provide us with the following information:

Full Name:

Street address:

Email Address:

Best Contact Number:

Alternate Telephone Number: (If Available)

Model Code:

Serial/IMEI Number from the bottom of the charging cradle:

Consumer No. 2:

Hi, I'm having the same problem in my ears, what can I do?.⁸

Samsung Response (by SamsungMoon)

If you are experiencing this symptom feel free to send a private message with the requested information. <https://bit.ly/2SUXRar>

Consumer No. 3:

I just bought new galaxy earbuds pro and the tips are causing pain and allergic reaction in my ears which never happened before. Anyone faced similar problems?⁹

Consumer No. 4:

Yes I am experiencing the exact same issue.¹⁰

Consumer No. 5:

It happens with me too!

First starts with Galaxy Buds. After 5 months of intensive use (5h a day for 5/7 days), suddenly my ears started to get wet and inflamed! Then dry skin patches appeared. I stopped using them for about 10 days, the symptoms disappeared. I started using Buds again, then the symptoms reappeared :(!¹¹

⁷ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/m-p/1727228#M19945> by satcom805 on February 28, 2021.

⁸ Posted at *id.* by userd3MUxtSmIm on Mar. 17, 2021.

⁹ Posted at *id.* by Speak2Doctor on Mar. 6, 2021.

¹⁰ Posted at *id.* by userqTnrEnbt4s on Mar. 17, 2021.

¹¹ Posted at *id.* by Mr_Indulis on Mar. 7, 2021.

Consumer No. 6:

Same here getting an allergic reaction.¹²

Consumer No. 7:

I only wore them for about an hour for a few days in a row. I did go to the doctor after my ears were very sore & was prescribed antibiotic eardrops. Other earbuds have not caused this reaction. I'm looking to try some other tips that are not silicone. I do want them to fit into the case for charging, though..¹³

Consumer No. 8:

I love my Samsung phones and ear buds. Around 2 months ago I was wear my ear buds and the inside of my ears started to itch and burned, I woke up and could not hear out of my ears and they hurt and were leaking. I went to the doctor and my doctor said I had a severe ear infection I stopped wearing the buds for a time. with some medication my ears got better .after a couple days of wearing my earbuds again my ears swelled shut again. I've cleaned the earbuds with disinfectant and alcohol wipes but it's only when I put these buds in my ears that I have the problem.i swear by Samsung I won't use anything else. they are the galaxy buds pro by far my favorite it saddened me that I can not use them anymore .¹⁴

Consumer No. 9:

The same thing has happened to me to the point that I thought I got an ear infection and went to urgent care because I was itching my ears so much my left ear was blocked.....I don't think I can wear them¹⁵

Consumer No. 10:

...I've used the buds twice and and had the same problem both times, the second time I had to go to the Dr's because fluid was coming from my ears also. This is a health issue and any other large company would issue a statement or do a total recall. I've never had a reaction to earbuds in the past. No help whatsoever from Samsung.¹⁶

Consumer No. 11:

I got free buds when I purchased the galaxy s21 ultra a few months ago, I used the ear buds for an hour one night and my ears were itching for two days. A few days ago I used the earbuds again for about 90 mins and my ears were itching straight after, the next morning my ears were sore and fluid was coming from them, I went

¹² Posted at *id.* by JamesNos on March 20, 2021.

¹³ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/2> by userxsEp0iIUq3 on August 15, 2020.

¹⁴ Posted at *id.* by Ninabetty on Apr. 15, 2021.

¹⁵ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/3> by user EricAMG on April 10, 2021.

¹⁶ Posted at *id.* by userwPE9eENLDd on Apr. 11, 2021.

to see a Dr and was informed I was probably allergic to the wing tip material. I've never had this problem with other earbuds (e.g. Apple). I've tried getting in touch with Samsung to see if there are tips available made of other material, but I'm finding it also very difficult to to get in touch/ get a response from them. I think the earbuds are great but I just cant used them again: I think its disgusting that Samsung are aware of this issue but won't help.¹⁷

Consumer No. 12:

After taking a Zpack and steroids with no results, I have determined through process of elimination and experimentation that I am having an allergic reaction to the earbuds. Severe leaking, crusty scab, and the feeling of swimmers ear, Itchy, and painful. I am not happy and looking for resolution.¹⁸

Consumer No. 13:

I have had all the exact same issues that you have had with your Earbuds. 2 ear infections in a row. Severe leaking, crusty scabs, fluid buildup causing bad hearing loss, extreme pain. I disinfected the buds and case after the first ear infection because I was paranoid. Well after using the buds for around 20 mins my ear infection returned for a second time. I am now on my second round of antibiotics. I know it's the Earbuds. Nothing else ever comes near my ears. And the fact your symptoms are all the exact same issues I'm experiencing. I've missed 2 weeks of work. Absolute nightmare.¹⁹

Consumer No. 14:

This is crazy! In a world of covid you wake up in the middle of the night to 2 itchy swollen ears canals and fluid leaking out, ya think your dying. Ringing that drowned out planes. Itching, swelling, shedding amd ringing in my ears lasted a couple weeks as I waited for my doctors appointment.

By the time I got there swelling and puss subsided and ringing was very on and off "maybe it was swimmers ear" the doctor tells me.

Finally after another two weeks I was normal. I was able to get back to my Galaxy Buds whos sound I missed. Used it 1 time today for a 35 minute phone and a 10 minutes of youtube and retired to bed. 30 minutes later a familiar and unstoppable itch began. Sure enough the same symptoms of itching and swelling are happening in both ears. Fluid is beginning to take place. WHAT IS GOING ON SAMSUNG. Are you poisoning me? My first set was great no problem (and I still have them).

¹⁷ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/4> by userwPE9eENLDd on Apr. 11, 2021.

¹⁸ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/5> by user5g4RH9iRkG on May 21, 2021.

¹⁹ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/6> by Theronkep on May 21, 2021.

For sure there is something wrong with these Buds. I want to have them analyzing. I hope this does not do any permanent damage to my ears. I would love to know why, and like I said. My first set doesn't effect me. These phantoms clear have something wrong. Im not looking for a refund. Im looking for an explanation if you can provide one.²⁰

Consumer No. 15:

I've experienced thus very ussue and Samsung has continued to ignore me and the community doesn't even acknowledge it. I get the same standard reply even though I ask specific questions when emailing so no use there and the community just tells me to sell them and buy something else. I know I am not the only one who has this reaction and there's something in the buds that is causing this. All I want to know is what they are made of because I do have a nickel allergy but if there's no nickel then obviously I am allergic to something else in the buds.²¹

Consumer No. 16:

The earbuds caused my ears to itch and ooze liquid. After visiting my doctor, I learned that the condition progressed to an infection. Treatment for the infection progressed to other health issues. Upon researching this on other posts, it is clear that other people are experiencing similar issues. Please respond to offer a solution to the problem.²²

Consumer No. 17:

I have a bad ear :ear: infection in my right ear from the buds pro.. Started irratating me badly flaky ear drum canal then my ears started oozing. So I started to use the left bud instead.. And now my left ear :ear: is infected.. And oozing.. These buds sound great but I cannot use anymore.. Going to the doc office on Monday.. Have to use the buds live.. For now.. 🙄...²³

Consumer No. 18:

Same problem for me too. I put them in. Literally 20 min. later, my ears start itching and burning. Then start draining some kind of ooze. I took them out for 2 days. Used them while doing yard work, and sure enough, symptoms came back again. They need to do a recall on them.²⁴

²⁰ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/7> by userL3k8g3blB4 on May 25, 2021.

²¹ Posted at *id.* by user61zQM95xtY on May 26, 2021.

²² Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/8> by uservRi8BWVQ27 on May 24, 2021.

²³ Posted at *id.* by Sexcmo78 on May 20, 2021.

²⁴ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/9> by Members_P5JyBmr on May 21, 2021.

Consumer No. 19:

Noted an issue the past month here in using my new Galaxy Buds Pro headset. Been using them infrequently and for short periods in the past month, and started getting extremely itchy and irritated ear canals afterwards. I did not at first think it was related to the headset as I have never had any reactions to any earphones (And I have worn quite a number of them by this time, including original galaxy buds).

A couple weeks ago I wore them for ~40 minutes during a walk, and shortly after developed a severe reaction and my ears in addition to itching madly, developed swelling and weeping of fluid constantly and this lasted for roughly two days. I stupidly did not attribute the issue to the headset at the time and thought it was an ear infection due to a light cold I had at the time however. Cue yesterday when I wore the buds for three hours straight, and roughly 30 minutes after taking them out, ears had a huge reaction and started swelling shut, itching, pounding, and profusely discharging fluid. My wife drove me to the ER as the burning in my ears and constant dripping fluid discharge was alarming as we had no idea what was going on.

Doctor was surprised but asked the usual questions, and pointed out that it was likely due to the headset. Either the material or some residue on the tips was his thought. Since the tips were carefully washed when I first got the headset, he said then likely it's something with either the material or possibly the housing on the headset then.

Doctor did irrigate my ears to try to wash away any possible residue from the headset, was met with very limited success however due to how swollen the ears were.

They prescribed anti-itch and anti-biotics due to the inflammation and I have a follow up later today to check in with them. Been over 14 hours since last exposure to the headset and ears are still constantly discharging fluid and swollen, maddeningly itchy.

I have no latex or silicon allergies to my knowledge and have never had issues like this before. Again, I've used countless headphones and various ear buds from many manufacturers, especially at the start of Covid here as I was testing numerous headsets for usage for our company to use for remote workers for telecommunications with clients.

I note there was another topic here that is closed with the exact same issues and I cannot reply to that anymore, and searching around the web there are other mentions of this on reddit and other social media. Looking for a response from Samsung on what is going on with this.

Looking for a response from Samsung on this one, very disturbing what is going

on with these headphones, especially considering their price.²⁵

Consumer No. 20:

I experienced a bad allergic reaction from the galaxy bud pro earbuds. My ears started itching, burning, swelling and oozing. I had to go to the doctor for drops for ear infection in both ears. I love the sound of the buds so in an attempt to keep them I bought some memory foam tips. Even with the memory foam tips, my ears started to itch and swell after 15 minutes of wear. I already had a pair of galaxy buds (not galaxy buds plus),so I recently put those back in my ear with no issues. The next day, still no itching. ****EPIPHANY**** maybe it's not the tips but the galaxy buds pro themselves, (the housing) So now I'm testing a theory.....I'm wearing the earbuds without any tips (not ideal if you are moving around) I will post an update of my results.²⁶

59. The above complaints are merely a sampling of complaints posted on the first 10 pages of a 31-page thread. There are also several other threads on the Samsung forum with consumers making substantially similar complaints.

60. Further, consumers have also complained about the Defect in the Earbuds at other third-party websites, including the following:

Consumer No. 21:

ORIGINAL POST:

Ever since buying the Galaxy Buds Pro, they have caused comfort issues to the point it hurts. The inner ear becomes sore, itchy, leaks fluids and forms scabs. It's horrible.

Back in May, it caused an ear infection and I had to visit a Dr who prescribed me antibiotics spray. It cleared up after 7 days, but the Buds Pro would still continue to cause comfort issues.

On another post, someone suggested inserting the Buds Pro a different way so that the sensor points are facing downwards. Whilst this was slightly better, my ears would still continue to scab up.

Fast forward to yesterday and my right ear has an ear infection, but much worse than the first. I had a high fever yesterday (with 38 degrees temperature) and now

²⁵ Posted at <https://us.community.samsung.com/t5/Galaxy-Buds/Galaxy-Buds-Pro-tips-allergic-reaction/td-p/1727228/page/10> by Jollywombat on Apr. 22, 2021.

²⁶ Posted at *id.* by gottahavemusic247 on Apr. 27, 2021.

my face is all swollen, red and painful.

I just can't go on using them and suffer. The sound quality of the Buds Pro are amazing, but the comfort design is just horrible. I've bought memory foam tips to replace the ones that Samsung provide, but honestly it doesn't do much for me other than improving sound.

Never had a problem with the Galaxy Buds Plus, they were fantastic in terms of comfort. I'm thinking of selling the Buds Pro because I can't keep getting ear infections.

UPDATE:

I've now been admitted to hospital for a few days with cellulitis (a deep skin infection) brought on by the ear infection that the Buds contributed to. The infection is currently dangerously close to my eye. I'm receiving a lot of antibiotics via a IV drip.

UPDATE 2:

I am now home after spending 4 days in hospital with cellulitis. I have sold the Buds Pro this week and will look for alternatives or wait for Buds 2 to be announced. I will never touch the Buds Pro ever again.²⁷

Consumer No. 22:

Hello I have purchased my 2nd pair of buds pro lost the 1st. Buy I noticed that they hurt my ears and they give me ear infection they get dry and leak along for a week Or few days. I tried them on multiple times and when I don't wear them for a week or days my ears heal. Does anyone else have this issue? Are they made out of latex or is it just me. Is there anything I can do to fix this?²⁸

61. Samsung regularly monitors both its own forums as well as third-party forums to understand issues that its consumers are having with its products.

62. The internet is also replete with articles discussing this issue and Samsung's ongoing knowledge of the Defect in the Earbuds.²⁹

²⁷ Posted at

https://www.reddit.com/r/galaxybuds/comments/ohg9j6/currently_on_my_2nd_ear_infection_caused_by_the/ by u/Graphic_Delusions.

²⁸ Posted at

https://www.reddit.com/r/galaxybuds/comments/ncyzwy/ear_issue_galaxy_buds_pro/ by u/Ghostreaper1234.

²⁹ See e.g. <https://www.gizchina.com/2021/05/10/samsung-headphones-accused-of-causing-ear-inflammation/>; <https://inf.news/en/digital/c7217427661c17604daff582c873b9d.html>;

Samsung's Sale of the Earbuds with a Known Defect and a One-Year Limited Warranty Defrauds Plaintiff and the Class.

63. Each of the Earbuds is defective is material, workmanship or manufacturing and such defect causes an allergic reaction in consumers and puts their health at serious risk.

64. As the foregoing comments show, however, Samsung has reaped profits from its sale of the Earbuds while successfully avoiding the need to provide relief to consumers by unconscionably limiting the warranty to not cover the Defect or simply replacing the defective Earbuds with another pair that contain the exact same Defect.

65. As a result, consumers are forced to choose between suffering the side effects of use or discontinuing use all together well before the end of the Earbuds' expected useful life.

66. Either scenario is contrary to a reasonable consumer's expectations and frustrates the consumer's entire purpose in purchasing the Earbuds with the expectation it would be a "durable good" with a long useful life.

67. Despite being alerted to the Defect as early as January 2021, Samsung continued to sell the Earbuds to Plaintiff and the Class without disclosing the Defect, and in fact, continues to sell the Earbuds to this day.

68. Plaintiff and the members of the Class could not have reasonably discovered the true, latent nature of the Defect until shortly before this class action litigation was commenced.

69. Samsung was and remains under a continuing duty to disclose to Plaintiff and the members of the Class the true character, quality and nature of the Earbuds, and that the Defect

<https://www.realmicentral.com/2021/05/09/samsungs-new-headphones-are-suspected-of-causing-ear-inflammation/>; <https://www.sammobile.com/news/are-you-experiencing-ear-inflammation-because-of-galaxy-buds-pro/>; <https://toronto.ctvnews.ca/samsung-ear-buds-causing-irritation-for-some-customers-1.5475219>.

results from a poor material, workmanship and/or failures in the manufacturing process, will cause an allergic reaction, poses a safety risk, and will cause Class members to pay out of pocket for medical costs and costs to obtain non-defective replacement products.

70. Instead of informing consumers of the Defect, Samsung advised consumers, including Plaintiff, to purchase aftermarket foam tips to prevent allergic reactions. Meanwhile, Samsung had received numerous complaints about the Defect and was well aware of its existence. In fact, its own agents have admitted to consumers and Plaintiff that the Defect is common and that they are aware of the issue. Consumers and Plaintiff bear the cost to try to remedy the Defect by purchasing aftermarket parts, which is futile because the replacement tips do not prevent the Defect from harming consumers.

71. As a result of Samsung's active concealment, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled. In addition, Samsung's active concealment constitutes a continuing violation against Plaintiff and the Class that continues to the present.

72. Plaintiff and Class members have suffered damages as a result of Defendant's deceptive practices, including but not limited to having to purchase aftermarket tips to try to prevent the issues and spending hundreds of dollars on headphones that cannot be used. Thus, Plaintiff and Class members paid hundreds of dollars in exchange for a functioning in-ear headphones, only to be saddled with substandard devices that fail to perform the basic functions that consumers were promised.

73. The experiences, complaints, and warranty claims of Plaintiff and the Class, along with Samsung's own forum addressing these complaints and readily searchable third-party sites collectively demonstrate that Samsung was or should have been aware of customer complaints and

experiences concerning the Defect in its Earbuds. But despite this knowledge, Samsung failed to provide notice of the Defect to the Plaintiff and Class, and/or implement any changes to cure the Defect associated with Earbuds or the way Samsung markets and sells the Earbuds to consumers.

CLASS ACTION ALLEGATIONS

74. Plaintiff brings this action individually and on behalf of the following Class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the Classes consist of each of the following:

National Class:

All persons or entities in the United States who purchased one or more Earbuds.

Or, in the alternative,

New Jersey Class:

All persons or entities in New Jersey who purchased one or more Earbuds.

75. Together, the National Class and the New Jersey Class shall be collectively referred to herein as the “Class.” Excluded from the Class are Samsung, its affiliates, employees, officers and directors, persons or entities that purchased the Earbuds for purposes of resale, and the Judge(s) assigned to this case. Plaintiff reserves the right to modify, change or expand the Class definition after conducting discovery.

76. Numerosity: The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class are unknown at this time, such information being in the possession of Samsung and obtainable by Plaintiff only through the discovery process, Plaintiff believes that the Class consists of thousands, if not tens of thousands, of persons and entities that were deceived by Samsung’s conduct.

77. Existence and Predominance of Common Questions of Fact and Law: Common

questions of fact and law exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common factual and legal questions include, but are not limited to:

- a. whether the Earbuds contain the Defect;
- b. whether Samsung omitted the Defect from its disclosure of the properties of the Earbuds to consumers;
- c. whether Samsung knowingly sold defective Earbuds;
- d. whether Samsung's one-year warranty is unconscionable;
- e. whether Samsung's conduct violated the New Jersey Consumer Fraud Act;
- f. whether Samsung's conduct resulted in it receiving unjust enrichment at the expense of Plaintiff and the Class; and
- g. whether Plaintiffs and Class members are entitled to declaratory or injunctive relief, rescission, monetary damages and/or other remedies and, if so, the nature of any such relief.

78. Typicality: All of Plaintiff's claims are typical of the claims of the Class since the Earbuds were advertised with the same type of false and/or misleading statements. Plaintiff and all members of the Class sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Samsung's wrongful conduct. Plaintiff is advancing the same claims and legal theories individually and on behalf all absent Class members.

79. Adequacy: Plaintiff is an adequate Class representative because her interests do not materially or irreconcilably conflict with the interests of the Class that she seeks to represent, she has retained counsel competent and highly experienced in complex class action litigation, and she intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and her counsel.

80. Superiority: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by

each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Samsung's conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Members of the Class can be readily identified and notified based on, *inter alia*, Samsung's records and databases.

81. Samsung has acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

82. New Jersey's substantive laws may be constitutionally applied to the claims of Plaintiff and the Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. New Jersey has significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiff and all Class members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair. Specifically, Samsung is headquartered in New Jersey, has advertised and sold its products in New Jersey, and upon information and belief, all of the harmful conduct alleged herein emanated from Samsung's New Jersey headquarters.

VIOLATIONS ALLEGED

COUNT I

VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT,

N.J. STAT. ANN. §§ 56:8-1, *et seq.*

(On Behalf of the Nationwide Class or, Alternatively, the New Jersey Class)

83. Plaintiff and the Class re-allege and incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

84. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.* (“NJCFA”) protects consumers against “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise...” N.J. Stat. Ann. §56:8-2.

85. Plaintiff and Class members are consumers who purchased Earbuds.

86. In the course of Defendant’s business, it knowingly concealed, suppressed, and/or omitted the fact that the Earbuds are defective, with the intent that Plaintiff and the putative Class rely upon that concealment, suppression, and/or omission when purchasing the Earbuds. The Defect, which is present in all Earbuds, is material to a reasonable consumer in that they essentially render the Earbuds unusable and pose a significant health risk to consumers.

87. Defendant has engaged in unfair and deceptive trade practices, including representing that the Earbuds have characteristics, uses, benefits, and qualities which they do not have; representing that the Earbuds are of a particular standard and quality when they are not; advertising Earbuds with the intent to not sell them as advertised; unconscionably limiting the warranty to not cover this type of defect; and otherwise engaging in conduct likely to deceive. Further, Samsung’s acts and practices described herein offend established public policy because of the harm they cause to consumers outweighs any benefit associated with such practices, and because Samsung fraudulently concealed the defective nature of the Earbuds from consumers.

88. Samsung’s actions as set forth above occurred in the conduct of trade or

commerce.

89. Defendant's conduct caused Plaintiff and Class members to suffer an ascertainable loss. Plaintiff and the other Class members bought Earbuds they otherwise would not have, overpaid for their Earbuds and did not receive the benefit of their bargain. Plaintiffs and Class members have also incurred costs for aftermarket parts and have been exposed to a health and safety risk.

90. Plaintiff's and other Class members' damages are the direct and foreseeable result of Defendant's unlawful conduct. Had the Defect in the Earbuds been disclosed, consumers would not have purchased or would have paid less for the Earbuds and would have been spared the subsequent expenses and inconvenience.

91. Therefore, Defendant has violated the New Jersey Consumer Fraud Act.

92. Plaintiff, individually and on behalf of the Class, seeks damages, equitable relief, treble damages, attorneys' fees, costs, pre- and post-judgment interest, and any other relief the Court deems fair and just.

COUNT II
UNJUST ENRICHMENT
(On Behalf of the Nationwide Class, or Alternatively, the the New Jersey Class)

93. Plaintiff and the Class re-allege and incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

94. Plaintiff brings this cause of action individually and on behalf of the members of the Class against Defendant.

95. Plaintiff and members of the Class conferred a benefit on Defendant by purchasing the Earbuds.

96. Defendant had knowledge that this benefit was conferred upon them.

97. Defendant has been unjustly enriched at the expense of Plaintiff and the Class, and its retention of this benefit under the circumstances would be inequitable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf and members of the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more Classes as defined above;
- B. Appoint Plaintiff as the representative of the Class and her counsel as Class counsel;
- C. Award all actual, general, special, treble, punitive, exemplary, incidental, statutory, and consequential damages to which Plaintiff and Class members are entitled;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant rescission and/or other appropriate equitable relief;
- F. Grant appropriate injunctive and/or declaratory relief;
- G. Award reasonable attorneys' fees and costs; and
- H. Grant such further relief that this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury on all issues so triable.

Dated: August 18, 2021

Respectfully submitted,

By: /s/Matthew R. Mendelsohn
Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, NJ 07068
Tel. (973) 228-9898
Fax (973) 228-0303

mrm@mazieslater.com

Counsel for Plaintiff and the Putative Classes